6th Cir.: Employee's Testimony Alone Prevents Dismissal of Overtime Claim

By Benjamin P. O'Glasser 7/7/2015

Permissions

An employee can proceed with a Fair Labor Standards Act (FLSA) overtime claim solely on the basis of his own testimony about hours worked, even when that testimony contradicts the employer's time records, the 6th U.S. Circuit Court of Appeals ruled.

The FLSA provides that employers must pay nonexempt employees time and a half for work exceeding 40 hours per week. Failure to do so triggers liability for double damages.

The Warren Auto Pro shop employed Jeffrey Moran as a mechanic from July or August 2011 until April 2013. The auto repair shop is owned by an ownership group that includes Zain Syed, who was responsible for overseeing Warren Auto Pro. The parties presented conflicting descriptions of the conditions of Moran's employment.

Moran testified that he agreed to work approximately 58 hours per week in exchange for $300 per week plus "bonus type profit-sharing." Moran claimed that his actual schedule involved over sixty-five hours each week, that any contrary time records were falsified, and that he never received overtime pay. Moran quit after an argument with Syed about not getting overtime pay or the bonuses he expected.

Warren Auto Pro presented evidence that it hired Moran to work 30 hour per week, that Moran never exceeded those hours and that it paid Moran $10 per hour. Warren Auto Pro produced time records maintained by Syed, who testified that he calculated and made employee timesheet entries after reviewing security footage to determine employees' arrival and departure times. One other employee testified consistent with the time records.

Moran's lawsuit asserted multiple claims. The district court dismissed all claims and characterized Moran's testimony as "somewhat vague." The 6th Circuit reversed, reinstating Moran's FLSA overtime wage claim. It concluded that Moran's testimony was sufficient to survive a motion for summary judgment, even in the absence of corroboration. The 6th Circuit emphasized that a court cannot make credibility determinations in considering the sufficiency of a party's evidence at summary judgment. Therefore, Moran's testimony was itself sufficient to create a jury question regarding his FLSA overtime claim.

The court made several observations that provide context to its decision. The court skeptically noted that Moran worked *exactly* 30 hours per week during 85 of his 90 weeks of employment, despite having a different schedule from week to week. Additionally, the court commented that Moran's testimony "coherently describe[d] his weekly work schedule, including typical daily start and end times[.]" Therefore, the nature and quality of the timesheets did "not amount to objective incontrovertible evidence" that Moran's testimony was inaccurate.

Moran v. Al Basit LLC, 6th Cir., No. 14-2335 (June 1, 2015).

Professional Pointer: Employers should avoid timekeeping systems exclusively controlled by management. Requiring employees to provide periodic affirmation as to the accuracy of their own time records will create evidence that may protect employers from FLSA overtime litigation.

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